

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ROBERT J. ZYSK and IRENE
ZYSK,

Plaintiffs,

MEMORANDUM AND ORDER
CV-03-4334 (DRH)

JOHN WAYNE SMITH,

Defendant.

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A P P E A R A N C E S:

For Plaintiffs:

Robert J. Zysk, Esq. Pro Se
629 Route 112, Suite 2
Patchogue, New York 11722

For Defendant:

John Wayne Smith, Pro Se
15759 State Highway 53
Temple, Texas 76501

HURLEY, Senior District Judge

On August 25, 2010, a pretrial conference in the captioned matter was held before me, at the conclusion of which the matter was scheduled for trial to begin on January 3, 2011 at 9:30 a.m. However, defendant, by letter dated December 31, 2010 (received by ECF at 3:20 p.m.)¹ requested an adjournment on the basis that certain purportedly essential records were seized by the FBI and were "apparently . . . destroyed." Tellingly absent from defendant's letter is, inter alia, an indication as to the nature of the subject records, what previous efforts had been made to obtain the records, and why their absence was not brought

¹ The Court was closed on New Year's Eve and, thus, defendant's letter was received by me this morning.

to the Court's attention prior to the eleventh hour before trial.

For the reasons indicated, defendant's application for an adjournment of the trial was denied as the courtroom deputy communicated to him via voice mail at 9:55 a.m. E.S.T. on January 3, 2011. However, to afford the defendant one last opportunity to appear, no evidence was taken today, and the case was adjourned until 9:30 a.m. on Wednesday January 5, 2011. At that time, if the defendant is again not present, a default judgment will be entered against him and the Court will proceed to an inquest on the issue of damages.

SO ORDERED.

Dated: January 3, 2011
Central Islip, New York

DENIS R. HURLEY, U.S.D.J.